SUPREME COURT, U. S.

Supreme Court, U.
FILED
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MICHAEL RODAK, JR., C

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1975

No. 75-1321

WILLIAM E. CRAWFORD, and FRANCES B. CRAWFORD, his wife, *Petitioners,*

vs.

SECURITY NATIONAL BANK, a corporation, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI
to the Court of Appeal of the State of California
First Appellate District
Division Two

WILLIAM E. CRAWFORD,
FRANCES B. CRAWFORD, his wife,
1203 - 12th Street,
Oakland, California 94607,
Telephone: (415) 893-8457,
Petitioners in Propria Persona.

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Petitioners William E. Crawford and Frances B. Crawford, his wife, pray that a writ of certiorari issue to review the judgment of the Court of Appeal, First Appellate District, Division Two.

OPINION BELOW

The judgment of the Appellate Court for Respondent is set forth in Appendix E.

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The order of the California Supreme Court denying the Petition for Hearing (Security National Bank, a corporation v. William E. Crawford and Frances B. Crawford, his wife, 1 Civ. No. 35893) is set forth in Appendix F.

JURISDICTION

The order of the California Supreme Court denying Petitioners' Petition for Hearing was entered January 14, 1976.

The jurisdiction of this Court is invoked pursuant to the provisions of 28 U.S.C. Section 1257(3).

Appendices A, B, C and D expand Jurisdiction more fully.

QUESTION PRESENTED

Is it not an accepted principle of judicial review that "courts will limit the operation of a statute by construction or severance of the language to avoid unconstitutionality, or, where unconstitutionality cannot reasonably be avoided, will not uphold a statute merely because a particular factual situation to which it is applicable may not involve the objections giving rise to its invalidity?

STATEMENT OF FACTS

Petitioners believe that the statement of facts as stated in Respondent's brief, 1 Civil No. 35893 in the

Court of Appeal of the State of California, succinctly contains all the facts in this case and is reproduced in full as follows:

> "Since Appellants have not provided a statement of the essential facts, respondents are providing the following to assist the Court.
>
> This action was commenced with the filing on February 7, 1968 of Complaint in Claim and Delivery and for Monies (CT 1).
>
> Plaintiff followed the then applicable claim and delivery procedure (C.C.P. Sec. 509-521, Vol. 15 West's Code of Civil Procedure (1954)), by delivering a declaration to the Sheriff of Alameda County (corrected CT 29) (former C.C.P. Sec. 510) together with endorsement to the Sheriff of Alameda County (CT 29) (former C.C.P. Sec. 511) and accompanied by an undertaking (corrected CT 5A) (former C.C.P. Sec. 512). The claim and delivery legislation was repealed by Stats. and added to the C.C.P. 1972 Ch. 855 and Stats. 1973-74 Ch. 526. This was contained in part in Assembly Bill 541 referred to in Appellants' Opening Brief in the authorities cited, lines 15-19.
>
> The Sheriff took possession of the described personal property on February 9, 1968 and delivered it to the representative of plaintiff, Security National Bank on February 15, 1968. See Return on Replevin (Corrected CT 31)."

ARGUMENT

Respondent and lower Court fail to take notice that the taking of defendant's possession was performed

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by Sheriff acting on a "non-judicial order." At this particular point in time, defendant's Constitutional guarantees of "due Process" were violated—seizure of his properties also involved not only violation of 4th Amendment but also 5th and 14th Amendments. Defendant believes that Constitutional Amendments supersede any State statute or Case decision.

It was wrong for lower Court (see Appendix E, page two, 2d paragraph) to state: "Appellants' contention was made to this court in *EAC Credit Corp. v. Bass* (1972) 21 Cal.App.3d 645, where a claim and delivery executed in April, 1969 was urged to be retroactively void under *Blair,* supra. We stated, at page 655, '*Blair v. Pitchess,* supra, was not retroactive and is to be applied prospectively.'" Defendant interpreted this ruling as a "finality" as to interpretation of his Constitutional rights. It is to be noted that "A state may choose the procedure it deems appropriate for the vindication of Federal rights, but where state court of last resort closes the door to any consideration of a claim of denial of a Federal right, it is not simply a question of state procedure." *Young v. Hagen* (Ill. 1949) 69 S.Ct. 1073, 337 U.S. 235, 93 L.Ed. 1333.

Defendants believe that decisions of State Supreme Court based on local laws not involving constitutional questions are not reviewable in the federal Supreme Court. *Hibben v. Smith* (Ind. 1903) 24 S.Ct. 88.

Blair v. Pitchess is an appellate decision by the Southern Cal. Appellate Court. The Appellate Court in San Francisco is in disagreement with the Los

Angeles Appellate Court, e.g., *EAC Credit Corp. v. Bass* in respect to *Blair v. Pitchess,* whereby a federal question has been decided by the Northern Appellate Court in a way in conflict with applicable decisions of the Supreme Court of the United States.

Respondent writes on page 8 of its brief as follows:

> "The Modern Management Method partial retroactivity is of no assistance to appellants. To be applicable at all, appellants would have been required to challenge the claim and delivery at the time the sheriff took possession of the personal property."

A more favorable position is taken towards appellants in response to the above untenable position by respondent. *Blair v. Pitchess,* 5 C.3d 258, 96 Cal.Rptr. 42, 486 P.2d 1242, under headnote No. 18, states as follows:

> "Searches #22—Without Warrant—Voluntary Submission — Waiver of Fourth Amendment Rights. '*An occupant's acquiesence to an intrusion of his premises on being confronted by the intimidating presence of an officer of the law and the legal process that appears to justify the intrusion in enforcing the claim and delivery law does not operate as a voluntary waiver of the 4th Amendment rights.*'"

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CONCLUSION

It was wrong for court to issue a final judgment on Appellants since it didn't take any consideration of Constitutional rights of Appellants when Respondent ordered Sheriff with a "non-judicial order" to take Appellants' possessions, thereby denying them "due process" and "unlawful seizures" and thus violated Appellants 4th, 5th and 14th Constitutional rights.

Dated, Oakland, California,
March 10, 1976.

WILLIAM E. CRAWFORD,
FRANCES B. CRAWFORD, his wife,
Petitioners in Propria Persona.

(Appendices Follow)

Appendices

Appendix A

(Reproduced in full from page two of Opening Brief)

SUMMARY OF MATERIAL FACTS

The complaint is one of Claim and Delivery whereby sheriff deputies have wrongfully delivered properties to Plaintiff/respondent. Defendant/appellant takes decisive issue with that portion of judgment prepared by Plaintiff for judge's signature, which reads as follows (CT page 26, lines 26 through 31):

> "IT IS ORDERED, ADJUDGED AND DECREED:
>
> 1. The request of plaintiff SECURITY NATIONAL BANK that its complaint be dismissed as to the remaining issues of money damages is granted and plaintiff's complaint is ordered dismissed as to all remaining issues."

Of utmost concern to defendant/appellant is the issue of the legality of plaintiff/respondent's order to the sheriff (lines 9 through 14) under heading of Declaration in Claim and Delivery, which reads as follows:

> TO: MARSHAL OR SHERIFF OF ALAMEDA COUNTY:
>
> YOU ARE INSTRUCTED TO TAKE THE PERSONAL PROPERTY FROM THE DEFENDANTS WILLIAM E. CRAWFORD AND FRANCES B. CRAWFORD, 4240 REDDING STREET, OAKLAND, CALIFORNIA, AND TURN OVER POSSESSION OF SAID PROPERTY TO STEVE J. DAVIS, JR., PLAINTIFF'S APPOINTEE ON PREMISES.
>
> DATED: FEBRUARY 7, 1968.
>
> BARRY R. GROSS"

It is to be noted that the above order was signed by plaintiff's attorney and not by any order from a judge to the sheriff.

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Appendix B

(Reproduced in full from page three of Appellant's Opening Brief)

ISSUES RAISED

Violation of Rules of Adjective Law

A judgment is irregular where its rendition is contrary to the course and practice of the courts (*Pruit v. Taylor,* 247 N.C. 380, 100 S.E.2d 841)—that is, where proper rules of practice have not been followed, or where some necessary act has been omitted (*Gunn v. Plant,* 94 L.Ed. 304; *Sache v. Wallace,* 101 Minn. 169, 112 N.W. 386), or has been done in an improper manner, *Sache v. Wallace,* supra.

Constitutional Guarantees

1. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. (Fourth Amendment).

2. No person shall be deprived of life, liberty, or property, without due process of law. (Fifth Amendment).

3. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its juris-

diction the equal protection of the laws. (Fourteenth Amendment).

4. The validity of a judgment may be affected by a failure to give the constitutionally required due notice and opportunity to be heard. (*Hanson v. Denekla,* 357 U.S. 235, 2 L.Ed.2d 1283, 78 S.Ct. 1228; *Sabariego v. Maverick,* 124 U.S. 261, 31 L.Ed. 430, 8 S.Ct. 461).

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Appendix C

(Reproduced in full from page four of Appellant's Opening Brief)

ARGUMENT

Plaintiff, in writing Judgment for Court, spends considerable effort in painting previous judgment positions which are irrevelant in this instance since matter before court was defendant's motion to advance case for trial (of complaint in Claim and Delivery), and trial date of June 5, 1974 was set by County Clerk. (Page 2 of Judgment, lines 20, 23, 22 which is page 30 of Clerk's Transcript). Fee for Jury Trial had already been deposited by defendant and still remains on deposit in court. In this posture plaintiff's motion to withdraw its complaint was made and accepted by the court. However, the remaining issues as to right of plaintiff to keep possessions of defendants remain unsettled and still is at issue.

Defendant interpreted the court as saying that a plaintiff had a right to withdraw its complaint at anytime before trial. Defendant believes this to be true except in instances where plaintiff has unlawfully gained possession of defendant's possessions hereforth its non-judicial order to the sheriff which sheriff unlawfully executed, and which plaintiff is still in possession. This is the entire "crux" of this matter. Defendant believes that this "remaining issue" cannot be that easily dismissed, nor can a court give "credence" to plaintiff's non-judicial acts—Order to Sheriff.

Defendant bases his arguments around two landmark cases, both being Californian:

1) *Blair v. Pitchess*, 5 C.3d 258; 96 Cal.Rptr. 42, 486 P.2d 1242.

2) *Randone v. Appellate Department*, 5 C.3d 536; 96 Cal.Rptr. 709, 488 P.2d 13.

The California Legislature Repealed the original Claim and Delivery Act by passing a New Claim and Delivery Act on 14 Aug. 72. This act resolves the "crux of the matter" in defendant's case—in that prior to taking of possession that there be both due process and order to sheriff be judicial in nature.

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Appendix D

(Reproduced in full from page six of Appellant's Opening Brief)

CONCLUSION

Appellant believes that he has faithfully presented his case and prays that the court reverses judgment on this case in that there was violation of rules of adjective law and that defendant's Constitutional guarantees were violated in Constitutional Amendments Four, Five and Fourteenth Amendments. Hence, the validity of a judgment may be affected by a failure to give the constitutionally require "due notice" and an opportunity to be heard, (*Renaud v. Abbott,* 116 U.S. 277, 29 L.Ed. 629, 6 S. Ct. 1194).

William E. Crawford
Frances B. Crawford

Appendix E

(NOT TO BE PUBLISHED IN OFFICIAL REPORTS)

In The Court of Appeal
State of California
First Appellate District

DIVISION TWO

1 Civil No. 35,893
(Sup. Ct. No. 376 939)

Security National Bank,
a corporation,
Plaintiff and Respondent,
vs.
William E. Crawford and
Frances B. Crawford,
Defendants and Appellants.

[Filed Nov. 17, 1975]

THE COURT:*

This is an appeal from a judgment of dismissal of plaintiff and respondent's remaining issues in his complaint in claim and delivery and defendants and appellants' cross-complaints and counterclaims. The sole issue before us on appeal is whether the decision in *Blair v. Pitchess* (1971) 5 Cal.3d 258, should be applied retroactively to void an execution of claim and delivery process in 1968.

The relevant facts may be briefly stated. Appellants and respondent's assignor, Abbey Rents, entered

*Before Taylor, P.J., Kane, J., and Rouse, J.

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into a conditional sales contract in June 1965 for the purchase of numerous items of eqiupment to be used in appellants' convalescent hospital. Following appellants' default, respondent instituted claim and delivery proceedings in February 1968 and repossessed the property. On July 1, 1971, the California Supreme Court declared unconstitutional the claim and delivery law (Code Civ. Proc., §§ 509-521) in *Blair v. Pitchess,* supra.

Appellants' contention was made to this court in *EAC Credit Corp. v. Bass* (1971) 21 Cal.App.3d 645, where a claim and delivery, executed in April 1969, was urged to be retroactively void under *Blair,* supra. We stated, at page 655: "*Blair v. Pitchess,* supra, was not retroactive and is to be applied prospectively.

"It enjoined the prospective application of the claim and delivery procedure [citation] in effect since 1872. [Citations.]"

Appellants' additional contention that the enactment of interim claim and delivery legislation in 1972 (Code Civ. Proc., §§ 509-521 [West Supp. 1974]) operates retroactively also fails. Our review of this legislation, as well as of the subsequent provisions (Code Civ. Proc., §§ 511.010-516.050 [effective July 1, 1974]) does not reveal a legislative intent that these provisions should apply retroactively. It is well settled that unless the Legislature clearly intends that legislation is to be given retroactive effect, it will be construed to apply prospectively (In re Rauer's Collection Co. (1948) 87 Cal.App.2d 248, 253).

Judgment affirmed.

Appendix F

Clerk's Office, Supreme Court
4250 State Building
San Francisco, California 94102

Jan. 14, 1978

I have this day filed Order

HEARING DENIED

In re: 1 Civ. No. 1 Civ. 35,893

Security National Bank

vs.

Crawford

Respectfully,
G. E. Bishel
Clerk

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